

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 09-3207 JB

ANTHONY MIRABAL, DAVID AGUILAR,
and KEVIN GARNER,

Defendants.

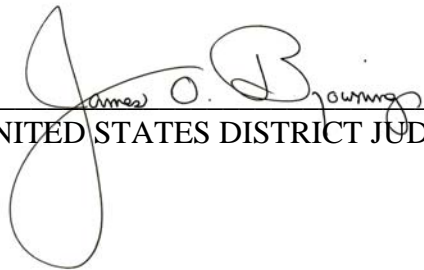
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendant David Aguilar's Motion in Limine to Exclude Hearsay, filed July 23, 2010 (Doc. 105). The Court held a hearing on July 29, 2010. The primary issue is whether the Court should prohibit Plaintiff United States of America from presenting any evidence of what a confidential informant told police investigators, which prompted the investigation of Defendant Anthony Mirabal. For the reasons stated on the record, and for further reasons consistent with those already stated, the Court grants in part and denies in part Aguilar's motion.

In the motion, Aguilar asserts that the statements of the confidential informant would be inadmissible hearsay and would also violate the Confrontation Clause of the Sixth Amendment to the Constitution of the United States. He thus asks the Court to "exclude hearsay statements made by the informant, any testimony from government agents that they had information from the informant that Mr. Mirabal was a drug trafficker or testimony that agents relied on hearsay information." Motion at 2. The United States responds that such statements would be proffered only for the purpose of showing their effect on the police officers -- specifically, that the statements

caused the officers to initiate their investigation -- and not for the truth of the matter asserted. At the hearing, however, Assistant United States Attorney John Anderson represented that he thinks he can present his case fully and fairly without using any of the confidential informant's statements. Based on that representation, the Court will grant the motion in part and exclude all statements made by the confidential informant. The Court will not, however, prohibit the United States from presenting testimony to the effect that investigators had a conversation with the confidential informant and, based on that conversation, initiated their investigation of Mirabal.

IT IS ORDERED that Defendant David Aguilar's Motion in Limine to Exclude Hearsay is granted in part and denied in part as set forth in this Order.



UNITED STATES DISTRICT JUDGE

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